



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0571]

RIN 1625-AA00

Safety Zone for Fireworks Display; Patapsco River, Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Patapsco River. This action is necessary to provide for the safety of life on these navigable waters of the Inner Harbor, Baltimore, MD, during a fireworks display on November 10, 2019, (with an alternate date of November 11, 2019). This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 11 p.m. on November 10, 2019, through 1 a.m. on November 12, 2019. This rule will be enforced from 11 p.m. on November 10, 2019, through 1 a.m. on November 11, 2019, or, in the event of inclement weather on November 10th, from 11 p.m. on November 11, 2019, through 1 a.m. on November 12, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0571 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, email Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Maryland-National Capital Region
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard was notified of two fireworks events on the navigable waters of the Inner Harbor, Baltimore, MD. Serpico Pyrotechnics, LLC of Toms River, NJ, notified the Coast Guard that it will be conducting a private fireworks display from 9:50 p.m. to 10 p.m. on September 21, 2019, to commemorate a wedding. And, the Baltimore Office of Promotion and The Arts of Baltimore, MD, notified the Coast Guard that it will be conducting a fireworks display from 11:30 p.m. to midnight on November 10, 2019, (rain date of November 11, 2019) to end their ten-day Light and Literature Unite festival.

In response, on July 15, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Safety Zone for Fireworks Displays; Patapsco River, Inner

Harbor, Baltimore, MD" (84 FR 33713). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to these fireworks displays. During the comment period that ended August 14, 2019, we received one comment. Additionally, after publication of the NPRM, the sponsor of the September 21st fireworks display notified the Coast Guard that they would not be conducting the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the fireworks to be used in the display on November 10, 2019, will be a safety concern for anyone in the Inner Harbor near the five firework floating platforms. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event. It is important to note that the Coast Guard's authority is limited to assuring safety of navigation. Coast Guard does not have jurisdiction over the fireworks themselves and cannot enforce the overall activity, through land security, debris clean up etc. unless there is a clear link to safety of navigation.

IV. Discussion of Comments

As noted above, we received one comment on our NPRM published July 15, 2019. The commenter expressed support for the rule, but requested greater detail concerning eight issues.

1. The type of security surrounding the Inner Harbor and the buffer zone on the ground and sea, as well as the number of roving patrols on both the land and sea.

This rule applies the Coast Guard's authority to impose appropriate controls on waters under its jurisdiction where it is necessary to provide for the safety of life during a fireworks display. The type and scope of security provided for the fireworks display is the responsibility of the event sponsor.

2. The scope of responsibility of the event sponsor, the Baltimore Office of Promotion and The Arts of Baltimore, MD.

The Coast Guard does not provide approval for fireworks displays, however, it identifies the event sponsor as responsible for the overall safety of a fireworks display. This includes the protection of participants and spectators from the hazards of the event. National Fire Protection Association (NFPA) 1123, Code for Fireworks Display, contains the industry standards for outdoor aerial fireworks set by the NFPA. NFPA 1123 defines the sponsor as "the organization (person, group, or government agency) that arranges with a duly authorized firework supplier for its services in presenting a fireworks display or in providing fireworks for use in a display." NFPA 1123 further states the sponsor for an outdoor fireworks display is responsible for obtaining a display permit from the Authority Having Jurisdiction (AHJ) prior to performing the fireworks display, if the operator or fireworks supplier does not. This approval includes providing, for review to the extent required by the AHJ, (i) verifiable proof of liability insurance of a type and amount deemed appropriate, (ii) a display site plan in the form of a diagram depicting the location of the display, (iii) written description of the event operating procedures,

including emergency procedures, and (iv) provisions for both fire protection and crowd control, of the level required for the display.

3. The policing up of the refuse by-product of fireworks and excess fallout on water surface, if any, or a contingency plan to minimize the fallout.

The Coast Guard does not provide approval for fireworks displays, however, it identifies the event sponsor as responsible for the results of said displays. NFPA 1123 does not specifically address the collection of firework remnants after the display. It states that the firing crew shall conduct an inspection of the fallout area for the purpose of locating any unexploded aerial shells or live components following the fireworks display and before any public access to the site is allowed, and when fireworks are displayed at night, a search of the fallout area shall be made immediately after the display and at first light the following morning.

4. Compensation aspects for security for participating law enforcement and Federal agencies to include special duty pay for off duty law enforcement personnel.

The Coast Guard does not provide security for the fireworks, nor does it compensate those law enforcement agencies providing such service for the sponsor. The employment and compensation of law enforcement personnel providing security for the fireworks is the responsibility of the event sponsor.

5. The possibility of intoxicated members of the public wandering into the safety zone.

The Coast Guard understands that fireworks spectators, whether they are intoxicated or not, may approach the safety zone. In addition to the constructive notice

provided by publication of this rule in the Federal Register, to enforce the safety zone established by this rule, the COTP will provide on scene patrol resources.

6. Posted signs of repercussions with proposed rule number to be used as a deterrent to trespassing personnel during proposed times.

This regulation requires that the sponsor post on the port and starboard sides of the barge on-scene within the area of the safety zone, a “FIREWORKS—DANGER—STAY AWAY” sign during the period indicating this safety zone will be enforced. The COTP will notify the public that the safety zone in this rule will be enforced by all appropriate means to the affected segments of the public, including publication in the **Federal Register**, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036 (previously codified in 33 U.S.C. 1232) and 46 U.S.C. 70052 (previously codified in 50 U.S.C. 192).

7. Proximity to and sufficient number of first responders (fire and rescue services) both on land and sea.

The Coast Guard does not arrange for fire and rescue resources for the display. NFPA 1123 states the sponsor consults with the AHJ, the local responding fire department (if different from the AHJ) and the operator to determine the level of fire protection required, that fire protection and other emergency response personnel and their vehicles remain at or beyond the perimeter of the display site during the actual firing of the display, and that watercraft ready and capable of providing rapid emergency response be present during the display.

8. Lighting for posted signs on land and road blocks or caution signs on surface streets surrounding the harbor for increased traffic warn drivers and pedestrians about the scheduled fireworks displays who may become distracted by the night sky being filled with bright lights and sounds.

The Coast Guard's broad legal authority over navigation safety in the navigable waters of the United States does not extend landside to those areas described, which are subject to Federal, State, and local agencies.

V. Changes from the NPRM and Discussion of the Rule

There is one change in the regulatory text of this rule from the proposed rule in the NPRM. As a result of the event sponsor's notification cancelling the fireworks display from a barge in the Inner Harbor, Baltimore, MD, on September 21, 2019, the Coast Guard has removed the enforcement period for this event proposed in the NPRM.

This rule establishes a safety zone to be enforced from 11 p.m. on November 10, 2019, to 1 a.m. on November 11, 2019, (or alternatively, in case of rain, from 11 p.m. on November 11, 2019, to 1 a.m. on November 12, 2019). The safety zone will cover all navigable waters of the Patapsco River, Inner Harbor, from shoreline to shoreline, within an area bounded on the east by longitude 076°36'12" W, and bounded on the west by the Inner Harbor west bulkhead, located at Baltimore, MD. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 11:30 p.m. fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on size, duration, time-of-day and time-of-year of the safety zone. Although this safety zone will restrict the entire width of the waterway, it will impact a small designated area of the Inner Harbor for a total of two hours during the evening when vessel traffic is normally low. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this

rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism,

if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969

(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone to be enforced for 2 hours that will prohibit entry within a small designated area of the Inner Harbor at Baltimore, MD. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0571 to read as follows:

§ 165.T05-0571 Safety Zone for Fireworks Display; Patapsco River, Inner Harbor, Baltimore, MD.

(a) Location. The following area is a safety zone: All navigable waters of the Patapsco River, Inner Harbor, from shoreline to shoreline, within an area bounded on the east by longitude 076°36'12" W, and bounded on the west by the Inner Harbor west bulkhead, located at Baltimore, MD. All coordinates refer to datum NAD 1983.

(b) Definitions. As used in this section:

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. All vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's designated representative by telephone at 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions

given to them by the COTP or the COTP's designated representative.

(d) Enforcement officials. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement. This safety zone will be enforced during the period described in paragraph (f) of this section. A "FIREWORKS—DANGER—STAY AWAY" sign will be posted on the port and starboard sides of the barge on-scene near the location described in paragraph (a) of this section.

(f) Enforcement period. This section will be enforced from 11 p.m. on November 10, 2019, to 1 a.m. on November 11, 2019. If necessary due to inclement weather on November 10, 2019, this section will be enforced from 11 p.m. on November 11, 2019, to 1 a.m. on November 12, 2019.

Dated: October 2, 2019.

Joseph B. Loring,

Captain, U.S. Coast Guard

Captain of the Port Maryland-National Capital Region.

[FR Doc. 2019-21774 Filed: 10/8/2019 8:45 am; Publication Date: 10/9/2019]